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TRANSCRIPT OF PROCEEDINGS

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

IN RE APPLICATIONS OF:

MM DOCKET NO. 92-316

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

-----)  
 In Re Applications of: )

RIVERTOWN COMMUNICATIONS CO. INC.)  
 SAMPLE BROADCASTING COMPANY, L.P.)

MM Docket No. 92-316

For Construction Permit for a )  
 New FM Station on Channel 282C3 )

Eldon, Iowa )  
 -----)

The above-entitled matter came on for hearing pursuant to notice before John M. Frysiak, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 4, on Wednesday, June 23, 1993, at 9:30 a.m.

**APPEARANCES:**

On behalf of the Rivertown Communications Company, Inc.:

DONALD E. WARD, Esquire  
 1200 Pennsylvania Avenue, N.W.  
 Fourth Floor  
 Washington, D.C. 20004

On behalf of Sample Broadcasting Co., L.P.:

JERROLD MILLER, Esquire  
 JOHN S. NEELY, Esquire  
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 1990 M. Street, N.W., Suite 760  
 Washington, D.C. 20036-3404

## I N D E X

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Mark McVey				
By Mr. Neely	218			
By Mr. Ward		219		
By Mr. Neely			279	
Bruce Linder				
By Mr. Neely	284			
By Mr. Ward		285		
By Judge Frysiak	130			
By Mr. Neely			343	

## E X H I B I T S

<u>Rivertown Exhibits</u>	<u>Identified</u>	<u>Received</u>	<u>Rejected</u>
Exhibit No. 17	263	265	
Exhibits No. 6 & 7		265	

Hearing began: 9:34 a.m. Hearing Ended: 3:13 p.m.  
 Lunch Break Began: 11:46 a.m. Lunch Break Ended: 1:08 p.m.

## P R O C E E D I N G S

JUDGE FRYSIAK: Okay. We're on the record. Any preliminary matters?

MR. NEELY: Just one preliminary matter, Your Honor. During yesterday's session I was directed by you to contact Mr. Garrett Lysiak at the firm of -- the broadcast consulting engineering firm of Owl Engineering in order to locate or to determine if Mr. Lysiak had in his possession a copy of an area to locate map that he supplied to Carmella Sample, and in order to determine if there was this separate 70 dBu overlap study and what document that referred to.

JUDGE FRYSIAK: Yes.

MR. NEELY: I was successful in contacting Mr. Lysiak last night. He informed me and faxed me this morning a copy of the area to locate study that he supplied to Carmella Sample, and it is this document. And he also reported to me that the 70 dBu overlap study, which is referred to Owl Engineering's invoice of September 23, 1991 to Sample Broadcasting Company, is the same document or same study as the August 8, 1991 study which has been previously identified in this proceeding as Rivertown Exhibit 7.

JUDGE FRYSIAK: Did you show counsel this?

MR. NEELY: Counsel has seen a copy of that overlap study, yes, sir, the map, the area to locate map.

JUDGE FRYSIAK: All right.

1           MR. WARD: May I just, may I just say that, that the  
2 August 8, 1991 map was not a study. It was a -- an area to  
3 locate map. I don't have any basis for questioning Mr.  
4 Neely's representations and I'm not going to question him, but  
5 I -- perhaps we could get a, a statement from Mr. Lysiak under  
6 -- you know, under --, either a sworn statement or --

7           MR. NEELY: Well, he did send me a covering  
8 memorandum with the -- it happens to be unsigned, but this,  
9 this was transmitted with the --

10          MR. WARD: Oh, okay.

11          MR. NEELY: -- with the area to locate map.

12          MR. MILLER: I think we're somewhat to an extent  
13 quibbling over the use of the word study and what Mr. Lysiak  
14 meant by, by study and I don't think anyone here is qualified  
15 to say whether the study, you know, was something other than  
16 the work which led to the map which was identified by, by  
17 Rivertown yesterday. One does a study and then one completes  
18 the study by preparing a document, the document in this case  
19 being the map. I think that's perfectly reasonable and  
20 whether there was some other study or not, Mr. Lysiak's  
21 covering letter indicates that the study was performed on  
22 August 8th and that was the day that the map with the 70 dBu  
23 contour was sent to Mr. McVey.

24          JUDGE FRYSIK: I think it's, it's good enough. The  
25 cover letter fact is good enough. And anyway you'll have an

1 opportunity to cross examine Mr. McVey.

2 MR. WARD: Very well.

3 JUDGE FRYSIK: Any other preliminary matters?

4 MR. WARD: May we just stipulate that that -- that  
5 this map, this area to locate map that you've furnished me and  
6 that came yesterday from, from Mr. Lysiak by fax, appears to  
7 be identical, to my untrained eye at least, identical to the,  
8 the area to locate map which he sent to Mr. McVey by his  
9 letter of July 30 which is Rivertown Exhibit 6.

10 MR. NEELY: This --

11 MR. WARD: It appears to be the same.

12 MR. NEELY: Yeah. The area to locate map was faxed  
13 to me this morning. I received it this morning and I agree.  
14 I'd be willing to stipulate that it appears to be the same as  
15 Rivertown Exhibit 6.

16 JUDGE FRYSIK: All right. So, no other preliminary  
17 matters to begin. I guess Mr. McVey is called.

18 MR. WARD: I did have -- Your Honor, I don't know  
19 when you want to take care of this, but I brought copies of  
20 the exhibits, Rivertown Exhibits 14 and 15, which were  
21 admitted yesterday and I have leave at that point to withdraw.

22 JUDGE FRYSIK: Yes. Please supply the --

23 MR. WARD: And I think I need to supply them to you,  
24 as well.

25 (Distribution of copies.)

1 JUDGE FRYSIK: All right. Does that conclude --

2 MR. WARD: Yes, sir.

1 Q Is that your signature on page 11 of that document,  
2 Mr. McVey?

3 A Yes, it is.

4 Q Would you like to make any -- is that document true  
5 and correct?

6 A To the best of my knowledge.

7 Q Would you like to make any changes to that document?

8 A Um --

9 MR. WARD: The witness is availbale.

10 MR. NEELY: This testimony was submitted under part  
11 of his written statement. I have no further direct  
12 examination of this witness. He's available for cross at this  
13 time.

14 THE COURT: All right. Thank you, Mr. Neely.



1           A     Well, briefly, the, the funding that I had previous  
2 to that fell short, so I received funding with the Linder  
3 family and that was the, the deal that we put together to  
4 provide the capital to construct the radio station.

5           Q     And when you say the deal we put together, who's we?

6           A     Oh, I talked with John Linder and myself and we  
7 agreed on that.

8           Q     And when was that? Was that deal put together  
9 before the application was actually granted?

10          A     I can't remember the exact date.

11          Q     Was that deal put together in order to, to come up  
12 with the funds to, to procure the dismissal of the competing  
13 applications?

14          A     I can't remember if it was. Prior to that --

15          Q     Had you known John Linder before? You'd worked with  
16 him before or worked for, worked for Linder stations before?

17          A     Yes, I had.

18          Q     You did -- is it not correct that there was a  
19 competing applicant that you paid several thousand dollars to,  
20 to get the dismissal of their application so yours could be  
21 granted?

22          A     Yes, there was.

23          Q     Did those, did those funds come from you personally?

24               MR. MILLER: Objection, Your Honor. Which case are  
25 we trying here?

1 MR. WARD: Well, we're -- I want to, I want to  
2 establish the, the -- both the history of his ownership and  
3 the Linder's ownership of Eddyville. Some remarks have been  
4 attributed to Mr. McVey on Mr. Brown's affidavit which suggest  
5 that Mr. McVey was rather dubious that Ms. Sample would  
6 survive as the really co-- and principal of Sample  
7 Broadcasting, and I want to show that there is a factual basis  
8 for, for such a belief on Mr. McVey's part.

9 JUDGE FRYSIK: You may ask.

10 BY MR. WARD:

11 Q Do you recall my question?

12 A No, I don't.

13 Q I think my question was whether the funds to procure  
14 the dismissal of the competing application came from you or  
15 from, from the Linders?

16 A They came from the Linders.

17 Q So -- and at that point had you reached an agreement  
18 for them to procure in it an equity interest in the -- in Olde  
19 Towne and to, and to fund its construction?

20 A I don't recall any written agreement.

21 Q Well, did you have an oral agreement?

22 A We discussed it, yes.

23 Q Well, did you have an oral agreement?

24 A Yes.

25 Q Was the money loaned to you based on acquiring an

1 interest in Olde Towne?

2 A The money from --

3 Q Linders. They gave you money right?

4 A Correct.

5 Q Was that with the understanding that they would also  
6 be owners?

7 A Correct.

8 Q And the understanding was that ultimately they would  
9 be controlling owners, was it not?

10 A Correct.

11 Q Was that agreement ever reduced to writing?

12 A No.

13 Q It was never filed with the Commission?

14 A I'm not certain whether it was.

15 JUDGE FRYSIK: Well, if it was never reduced to  
16 writing, when would you have filed it?

17 BY MR. WARD:

18 Q And so when the application was granted you were  
19 still the -- as far as the FCC was concerned, you were still  
20 the 100 percent owner of Olde Towne?

21 A Correct.

22 Q Are you -- you're obviously still an owner or still  
23 an officer and director of Olde Towne. Do you still sign such  
24 thing as Ownership Reports and Employment Reports and other  
25 FCC filings?

1       A     My personal self, I usually do not do that, no.

2       Q     Well, it was your personal self I was referring to.

3       MR. NEELY:  What point in time are we talking about?

4       MR. WARD:  I'm talking about just the -- currently.

5       BY MR. WARD:

6       Q     Who does do that as a matter of course now?

7       A     Bruce Linder.

8       Q     I'm sorry?

9       A     Bruce Linder.

10      Q     And how long has he had that role?

11      A     I can't remember the exact date he started doing it.

12      JUDGE FRYSIAK:  Well, did you ever file reports your

13      personal self?

14      WITNESS:  I've made applications for a remote pickup

15      unit and thing such as that, yes, I have.

16      BY MR. WARD:

17      Q     But -- technical applications you might, you might

18      sign, but non-technical reports or, or applications are Bruce

19      Linder's responsibility at, at the present time?

20      A     Correct.

21      Q     And that has been the case ever since Bruce Linder

22      became an officer and director and stockholder of, of Olde

23      Towne?

24      A     That is correct.

25      Q     And -- I'm jumping ahead here a little bit, but

1 before, before him John Linder was -- before Bruce became a  
2 stockholder John Linder was a stockholder, and did he have a  
3 similar function during the period -- that is, did he, John  
4 Linder, have a similar function during the period that he was  
5 an officer and stockholder?

6 A Yes, he did.

7 Q I'd like to show the witness at this point an  
8 Ownership Report for Olde Towne dated July -- signed July 31,  
9 1990 by John Linder. This was attached incidentally to the  
10 Pre-designation Petition to Deny which, which Rivertown filed  
11 initially raising this issue, and it was attached again, I  
12 believe, to the -- of this Commission, the Motion to Enlarge  
13 Issues which was filed. I'm sure counsel has seen it before  
14 or has it in his files. But this, this report as of June 29,  
15 1990 indicates in response to Question 1 that it's being,  
16 being filed apparently as the initial report for a new station  
17 granted December 7, 1989. Is that, is that correct?

18 A I don't understand.

19 Q Well, you -- well, this question asks for whether  
20 the -- whether this is an annual Ownership Report or whether  
21 it's being filed to report a transfer of control or assignment  
22 of license or for some other purpose, and the other purpose  
23 stated here is that it was as a result of a new station being  
24 granted the previous December. At the third page of that  
25 Ownership Report it shows that you are Vice President,

1 Director and hold 51 shares or 51 percent of the Eddyville  
2 license. Correct?

3 A Yes.

4 Q And that John Linder has 20 percent, 20 shares, and  
5 Don Linder has 29 shares or 29 percent? Correct?

6 A Correct.

7 Q Now -- and was that the correct status -- is that  
8 the status that existed on June 29, 1990?

9 A Correct.

10 Q But you still have --

11 MR. NEELY: Wait. June 20?

12 MR. WARD: June 29, 1990.

13 MR. NEELY: Okay.

14 BY MR. WARD:

15 Q Now, do you still have the -- you still had an  
16 understanding, though, for them to acquire control? Correct?

17 A Correct.

18 Q Had you, had you met Donald Linder personally at  
19 this point concerning Eddyville?

20 A Yes.

21 Q Was your, was your -- the oral agreement that you  
22 described for the Linders to acquire control in some fashion  
23 with Don Linder personally or with John Linder?

24 A A combination.

25 Q Both of them? You negotiated the agreement with

1 both of them at the same time?

2 A I don't think the same time.

3 Q Were you assisted in that by any attorneys or just  
4 by ear, the two or three of you?

5 A No.

6 Q Now, did that agreement contemplate that they would  
7 pay you anything for -- or did, or did they pay you anything  
8 when they acquired -- when John Linder acquired his 20 shares  
9 or when Don Linder acquired his 29 shares according to this  
10 report?

11 A I don't remember. I don't think so.

12 Q You don't think they did? Did they put money into  
13 the corporation?

14 A Yes, they did.

15 Q And that was to enable the payment to the competing  
16 applicant and, and the initial construction?

17 A The initial construction, yes.

18 Q Now, there came a time when you filed an application  
19 in December of 1990 to transfer control of the Eddyville  
20 permittee, Olde Towne Communications, and that was pursuant to  
21 an agreement, was it not?

22 A An agreement?

23 Q A written agreement.

24 A Correct.

25

1 that was attached to the letter -- application. You want to  
2 take a look through that? Does that look familiar.

3 A Yes.

4 Q Let's go to the last page and see who signed it. Is  
5 that your signature under the Seller?

6 A Yes, it is mine.

7 Q And Donald Linder's signature under the -- as Buyer  
8 and, and as President of Olde Towne Communications? Correct?

9 A Correct.

10 Q Okay. And the consideration stated that -- if I may  
11 summarize this just quickly, it, it called for the sale value  
12 to Don Linder, 31 shares constituting 31 percent of the  
13 licensee stock for the sum of \$1,240. Is that correct?

14 A That's correct.

15 Q That's all you got for 31 percent and control of  
16 Olde Towne Communications? Correct?

17 A --

18 Q And that agreement was approved and consummated?  
19 Correct? Is that the only money you've ever been paid for any  
20 of the -- that you --

21 A Other than the normal payroll, correct.

22 Q I'm sorry. Other than the what?

23 A Other than on the payroll.

24 Q Other than getting a, getting a paycheck every week  
25 or two?



1           A     Correct.

2           Q     Do you have a -- is there any kind of a  
3 stockholder's agreement within Olde Towne Communications which  
4 gives you rights to buy stock from other stockholders if they  
5 want to sell?

6           A     I'm not certain if there is.

7           Q     If you wanted to sell your stock today to the  
8 highest bidder or anybody you wanted to, would you be free to  
9 do that without offering it first to Mr. Linder or --

10          A     I'm not certain.

11          Q     How would you find that out?

12          A     Read the Articles of Incorporation.

13          Q     You're not aware of any agreements per se that, that  
14 dispel those rights or obligations?

15               MR. NEELY: Your Honor, the witness has testified  
16 he's not certain. I don't know what more you can get.

17               MR. WARD: But I'm certainly permitted to explore  
18 the degree of his own certainty, Your Honor.

19               JUDGE FRYSIK: Well, he's indicated -- the question  
20 is is he aware of any agreement extent which forces him to act  
21 in a certain way. He says he's not aware of any.

22               MR. WARD: He referred to his -- the Articles of  
23 Incorporation as something he might want to read to see if  
24 they had such a preclusion. so I'm just trying to narrow it.

1 | that raises uncertainty.

2 | BY MR. WARD:

3 | Q Have you -- there came a time I believe in, in 1991  
4 | when, when Bruce Linder became a stockholder purchasing some  
5 | of John Linder's stock? Do you recall that?

6 | A I don't recall the exact date.

7 | Q I'm not asking you to recall the exact date, but you  
8 | do recall that that happened, do you not?

9 | A Yes, I do.

10 | Q Were you offered an opportunity to purchase John  
11 | Linder's stock before it was sold to Bruce Linder?

12 | A No, I was not.

13 | Q You didn't check the Articles of Incorporation at  
14 | that time to see whether you had such a right?

15 | A No, I did not.

16 | Q What -- with respect to the, the 20 shares of -- and  
17 | 20 percent interest which you have in Olde Towne today, what  
18 | is your investment? How much did you pay for those shares?

19 | MR. NEELY: Your Honor, I think what he paid for his  
20 | shares is totally beyond the scope of this proceeding.

21 | JUDGE FRYSIK: You're going to connect that all up,  
22 | I assume?

23 | MR. WARD: Well, I wanted -- I'm trying to determine  
24 | just what the, the degree of his economic interest in this  
25 | entity is because part of the issue here is whether the,

1 whether the Sample application was filed in part to -- in  
2 whole or in part to protect the existing economic interest of,  
3 of Olde Towne Communications.

4 JUDGE FRYSIK: All right. You may ask.

5 WITNESS: During the application process I invested  
6 approximately \$10,000.

7 BY MR. WARD:

8 Q And you've never had that paid back? That's treated  
9 as a capital contribution?

10 A I consider that part of the contribution of Olde  
11 Towne.

12 Q And you would expect -- I assume if the station were  
13 sold, you would expect to receive 20 percent of the net  
14 proceeds?

15 A That's correct.

1 Were you not aware of that?

2 A Yes, I was.

3 Q When was your first awareness of that?

4 A Spring of 1991.

5 Q Spring of 1991?

6 A Correct.

7 Q And when you became aware of that, did you mention  
8 it to any other officers or directors or stockholders of Olde  
9 Towne Communications?

10 A No, not at that time.

11 Q Did you mention it to any, any employees of, of  
12 KCSI?

13 A I mentioned it out loud while at the radio station.

14 Q And what did you say?

15 A It's hard for me to remember the exact statement,  
16 but it's something to the effect of it's interesting another  
17 radio station is going into Eldon.

18 Q Were you, were you aware -- when you first became  
19 aware of -- that an Eldon allocation was being proposed, were  
20 you also aware at that particular time that the proponent was  
21 David Brown or did you learn later that David Brown was the  
22 one who initiated the rule making?

23 A I learned later.

24 Q How much later?

25 A The same day.

1 Q From whom did you learn this?

2 A Mr. Bill Collins.

3 Q And did Mr. Collins tell you that publicly or  
4 privately?

5 A In a room by ourselves.

6 Q And Mr. Collins had heard you make a statement  
7 earlier that morning about the -- your -- when you learned --  
8 when you had first made a statement concerning the proposed  
9 Eldon allocation, right?

10 A Correct.

11 Q You have seen Mr. Collins' testimony which was put  
12 in the record yesterday as Rivertown Exhibit 5?

13 A No, I have not.

14 Q You have not seen that? Well, it's very brief. I'd  
15 like -- just like you to --

16 MR. WARD: Will you furnish him a copy? That would  
17 save me some trouble. Thank you.

18 BY MR. WARD:

19 Q Would you read that over?

20 A Okay.

21 Q Is this the first time you've read that statement?

22 A Correct.

23 Q Is -- looking at the first paragraph of that  
24 statement, is that a fair summary of the, of the -- of what  
25 you said at the KKSI studios in the spring of '91 when you

1 learned that, that there was a proposal pending for Eldon?

2 A I recall talking about it, but I don't recall saying  
3 we ought to get Carmella --

4 Q You don't recall that? You were aware, you were  
5 aware that Carmella was of Hispanic origins?

6 A Correct.

7 Q And you were aware of the FCC tending to favor  
8 minorities in its, in its competitive assessment of competing  
9 applications?

10 A Yes, I was.

11 Q You -- is it not correct that you do have a, a bit  
12 of a reputation for making facetious or such spontaneous  
13 remarks?

14 A I don't know. I can't judge myself.

15 Q You don't find that you get a lot of laughs wherever  
16 you go? I know you're quite serious now, but -- and this is  
17 serious business, but you do have a, a humorous flare, you  
18 know?

19 A Correct.

20 Q Yeah. What's your nickname, by the way?

21 MR. NEELY: Your Honor, I don't --

22 MR. WARD: Well, I guess --

23 MR. NEELY: -- think Mr. McVey's nickname has any  
24 bearing on this proceeding. Let's get on with the business at  
25 hand.

1 MR. WARD: Well, it does have a bearing.

2 BY MR. WARD:

3 Q Isn't Olde Towne Communications a derivative of your  
4 nickname?

5 A No. It's a derivative of the two cities that we  
6 service.

7 Q Okay. Well, getting back to this paragraph 1 of  
8 Rivertown Exhibit 5, if Mr. Collins -- you know Mr. Collins  
9 quite well, do you not?

10 A Yes, I do.

11 Q And he was working for you at that time?

12 A Yes, he was.

13 Q If he remembers that statement being made, would  
14 you, would you dispute him?

15 A Well, that's not how I remember, no.

16 Q Well, what do you remembering saying?

17 A Just that we had discovered the frequencies of the  
18 allocations being made and --

19 Q And that's all?

20 A Correct.

21 MR. NEELY: Give the answer in full complete  
22 sentences so the reporter can understand you.

23 BY MR. WARD:

24 Q Looking at the second paragraph of Mr. Collin's  
25 affidavit, Rivertown Exhibit 5, he refers to a telephone call

1 which he received from you on April 1 of 1992. Did you make  
2 that call?

3 MR. NEELY: Have you finished reading the paragraph?

4 BY MR. WARD:

5 Q Did you make that call to him --

6 A Yes, I did.

7 Q -- at KKMI (sic)? And what was the purpose of that  
8 call?

9 A I was interested in finding out whether he would be  
10 interested in returning to work for KKSI.

11 Q And?

12 A I was under the assumption that Mr. Pritchard had a  
13 falling out with Dave Brown and that they would need to have a  
14 place to go to work.

15 Q They being both Bill Collins and Dave Brown?

16 A Correct.

17 Q And, and you were exploring with Bill Collins the  
18 possibility of their both coming back to KKSI or -- correct?

19 A Bill Collins coming back to KKSI.

20 Q Okay. So this is a fair summary of, of paragraph 2  
21 or is it a fair summary of your conversation that is contained  
22 in paragraph 2?

23 A Correct.

24 Q Were you -- before you made that call, did you --  
25 had you discussed, discussed your intention to make the call



1 with Bruce Linder or any -- or with his father, Donald Linder?

2 A No.

3 Q You were just acting on your own?

4 A Correct.

5 Q Who, who makes the hiring decision at KKSI? Do you?

6 A No, I do not.

7 Q Who does?

8 A Pat Flaherty and, and Bruce Linder.

9 Q Pat Flaherty and Bruce Linder? Pat Flaherty is the  
10 General Manager?

11 A Correct.

12 Q And he's been the General Manager for approximately  
13 one year -- two years?

14 A Approximately two years.

15 Q Is there a -- well, let's --

16 MR. NEELY: Are we finished with this exhibit?

17 MR. WARD: Yes. Thank you.

18 BY MR. WARD:

19 Q Now, from the time in the spring of '91 when you  
20 first learned of the proposal to allot this channel to Eldon  
21 up until the end of July when you learned that the Commission  
22 had actually made the allotment, did you ever have occasion  
23 to, to discuss that proposal with anybody else, discuss the  
24 proposed allotment with anybody else?

25 A I don't remember speaking to -- I just don't